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Between Sovereignty and Race

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Between Sovereignty and Race: The Bombardment of Hospitals in the Italo-Ethiopian War and the Colonial Imprint of International Law

*We will give them hospitals [...], along with
roads, schools, doctors, all the advantages of
civilisation.*
Benito Mussolini¹

In April 1937, Nazi and Fascist airplanes bombed the Spanish town of Guernica in an infamous act of destruction. Just a year earlier the Duce's son, Vittorio Mussolini returned from the 1935-1936 Italo-Ethiopian War where he had served as an air-force pilot and photographer. Since crimes perpetrated in the colonies received much less attention than those committed on European soil, no Picasso painted the widespread destruction carried out by the airplanes in Ethiopia. Instead, it was Vittorio Mussolini who exposed the frightful effects of the war in Ethiopia when he published a memoir about his incursions into the Abyssinian skies called *Flights Over the Amba Mountains* (1937). Combining a patriotic narrative with pictures immortalizing the “little black faces” in their daily lives and aerial images of the destruction, Mussolini refers to his experience as the “beauty of war.”

This “beauty” is produced through the act of indiscriminate bombing—including the targeting of hospitals—and the excitement of seeing it all from the sky (Mussolini 1937: 84). Indeed, Mussolini's ability to capture aerial bombardments with a camera transformed the destruction and indiscriminate killing into an aesthetic object which reflected the “beauty of war” (Forgacs: 117-118).² His enthusiasm echoed the ideas of Italy's military experts and futurist thinkers—from Giulio Douhet (1921) to Tommaso Marinetti (1909, 1935)—who played a crucial role not only in theorizing military and political practices and processes, but also in underscoring the aesthetics of aerial bombing. Since the aerial destruction of Libyan protestors in 1911, Italian thinkers claimed that airplanes comprised an extremely efficient tool for “pacifying” subjugated people in the “colonial peripheries” and were an essential part of human development (Hippler 2017: ix-xii, 25, 59, see also Lindqvist 2003). In Marinetti's (1915) words, the Italian air-force was an instrument for regenerating humanity.

The Italo-Ethiopian war began in 1935 when the Fascist regime attempted to expand its control over Eastern Africa beyond Somalia and Eritrea. Mussolini the father and his fascist military establishment sought to take revenge for the 1896 debacle of Adwa, where Italy had been defeated by Ethiopian troops (Labanca 2008). While the desire to control parts

¹ Benito Mussolini responding to the accusation of bombing hospitals in Ethiopia during the 1935-1936 war of aggression, cited in Baudendistel 2006.

² As it turned out, the attacks on Abyssinia constituted a turning point in fascist imaginative policies, triggering the advent of a colonial cinematic enterprise (Courriol 2014: 124, see also Ben Ghiat 2015). After his return from Ethiopia, Vittorio became the director of one of the leading Italian cinema journals—*Cinema. Quindicinale di divulgazione cinematografica*—and a successful film producer. In this capacity, Vittorio Mussolini co-wrote the script of the film *Luciano Serra: Pilot* with Roberto Rossellini, the founder of the Italian neo-realist cinematographic school. The film's plot revolves around the figure of Luciano Serra, the hero-pilot who sacrifices himself to save his son after the latter's airplane was shot down and he was about to be captured by the anti-colonial resistance. In the film, which received the Mussolini Cup at the 1938 Venice Film Festival, Ethiopians are often represented as fighting from hidden positions, attacking the Italians by surprise. The movie reflects Italy's recurrent nightmare, that its pilots could be seized and killed by the Ethiopian resistance—one of the reasons with which Italy justified its indiscriminate bombardments of Ethiopia during the 1935-36 war.

of Africa was the driving force of both military expeditions, this desire was inflected by Italian racism. The four decades separating the two wars were, however, crucial, since following World War I Ethiopia became a member in the League of Nations thus changing its status within the international community. Moreover, during this period transnational black anti-colonial consciousness had grown stronger. In the premonitory words of W.E.B. Du Bois, the Ethiopian crisis would have an effect on international inter-racial relations, because “the black world knows this is the last great effort of white Europe to secure the subjection of black men” (Du Bois 1935).

Prominent historians of Italian colonialism, such as Angelo Del Boca (1996), Richard Pankhurst (1999), and Giorgio Rochat (1988), have documented how the ground invasion and aerial bombardments resulted in a series of war crimes. During the conflict, the Italian military did not hesitate to use mustard gas, execute captured prisoners, and systematically target civilian sites. After annexing Ethiopia in 1936 and proclaiming it part of the Italian East African empire, Italy continued to occupy the country until 1941, when the Ethiopian Free Army, supported by British forces, managed to regain control of their country.

While Italy’s notorious use of mustard gas has become common knowledge, its systematic bombardment of medical facilities operated by different Red Cross Societies—especially from Sweden, Austria, Britain, Egypt, and Switzerland—is much less known. One of the few scholars to document these bombardments is the historian Richard Pankhurst (1997), who identified at least twenty-two cases of Italian aerial targeting of Red Cross units throughout the war (see also Baudendistel 2006). The assault on medical facilities was presented by the fascist regime as legitimate reprisal for the Ethiopian army’s systematic use of the Red Cross emblem and field hospitals as shields; it was, the Italians claimed, the Ethiopian forces who had violated international law, particularly the principle of distinction, when they used medical facilities to hide.³

Arguably the bedrock of international humanitarian law, this principle calls upon belligerents to distinguish between combatants and non-combatants. The principle was first set forth in the 1868 St. Petersburg Declaration, which states that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy.”⁴ The idea is that during war civilian sites and populations should be protected. Article 25 of the 1907 Hague Convention is also informed by this principle, prohibiting “the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended”⁵. During the Italian invasion of Ethiopia, the principle of distinction was already a prevalent legal doctrine, but was subjected to ambiguous use in colonial contexts.⁶

Indeed, most colonizers did not adhere to the principle of distinction in their colonial wars. Legal finger pointing like the kind adopted by the Italians against the Ethiopian resistance forces was quite uncommon in the context of the wars taking place on the African continent. As Anthony Anghie (2005) and Frédéric Mégrét (2006) have shown, according to positivist jurisprudence laws of war were agreements between states and were therefore deemed inapplicable in colonial wars where only one side was a sovereign state. Precisely because the colonies had not been admitted into the family of nations, international law remained silent with respect to colonial conflicts (Orford 2006). Ethiopia, however, was different. Unlike almost all other African countries at the time, Ethiopia had already been

³ On using human shields to frame the enemy’s methods of warfare as war crimes in contemporary wars, see Gordon and Perugini (2016) and Perugini and Gordon (2017).

⁴ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November/11 December 1868.

⁵ Hague Regulations (1907), Article 25. Following World War II, the principle of distinction was codified in the 1949 Fourth Geneva Conventions and the 1977 Additional Protocol.

⁶ For a critical history of the principle of distinction see Kinsella (2017).

recognized as an independent state and member of the League of Nations. Indeed, Ethiopia had joined the League in 1923, as a result of pressures exerted by France to prevent other colonial powers (i.e., Italy and Britain) from expanding their control in East Africa (Iadarola 1975).

On the one hand, then, Ethiopia's sovereign status rendered international law applicable, since the war was carried out between two internationally recognized countries rather than between a sovereign state and its colonial subjects. This facilitated, in turn, the unprecedented involvement of the ICRC in a conflict taking place in Africa. It also explains why key international actors like the League of Nations and the ICRC debated whether the Italians and Ethiopians had followed the dictates of international law, but simultaneously failed to discuss the law's application during other colonial wars.

On the other hand, and as we show below, Ethiopia's status as a sovereign state was extremely precarious, since it was considered uncivilized. Ethiopia's treatment as a non-equal member of the family of nations is arguably most apparent from the debates around the use of the Red Cross emblem and medical facilities as shields. In these debates, the Italian regime explained that because the Ethiopians belonged to an inferior civilization, they systematically ignored international humanitarian law. Italy even claimed that the Ethiopians were actually to blame for the deaths caused by the fascist regime's indiscriminate aerial bombings, arguing that the Ethiopian army was the one that had first violated the principle of distinction between combatants and non-combatants when its fighters hid behind the Red Cross emblem. The Italians thus created an artificial link between the Ethiopian's ostensible inability to follow the principle of distinction and the population's race.

While in intra-European wars the colour of one's skin, ethnicity or race were not invoked to explain indistinction during a conflict, in the Italo-Ethiopian war race was presented as the main cause for the lack of distinction and as a justification for Italian crimes. Moreover, the assertion that indistinction was a product of race was not, as we will show, merely a fascist claim, but rather a colonial trope that was tacitly shared by the League of Nations and the ICRC.⁷

In the following pages, then, we carefully examine these accusations. Our interest is not in establishing whether Italy's accusations were true or false—Ethiopians might have shielded behind the Red Cross—but rather in understanding how the shielding charge were mobilized in order to create a crucial racial distinction between legitimate Italian and illegitimate Ethiopian warfare methods. We accordingly reconstruct the debates within the League and the ICRC and analyse the specific triangulation among race, sovereignty, and international law that they reveal.

Our analysis discloses how international law was rendered operable through a double-movement of integration and exclusion. Due to Ethiopia's sovereign status, international law was considered applicable and Ethiopians were integrated as legal subjects. Simultaneously, however, as a result of the population's race, Ethiopian society was considered uncivilized and therefore unable to comprehend the basic principles of international law, which justified the deployment of lethal violence against the black population. International law was, in other words, applied in a prejudiced and partial way. This suggests that while sovereignty has served as the gatekeeper, determining the pertinence of international law to the case at hand,

⁷ Fabian Klose traces the beginning of ICRC's involvement in colonial contexts back to the Algerian and Kenyan wars of liberation in the 1950s and 1960s (Klose 2011; 2013; see also Pringle 2017). However, the Ethiopian case reveals that the ICRC's involvement in colonial contexts and its complicity with colonial powers started much earlier. In a recent article, Vasuki Nesiiah shows how the founder of Red Cross, Henry Dunant, conceived the French colonization of Algeria as a "good fortune for all" as he condemned the crimes committed in Solferino. She also points out how another ICRC co-founder of the Red Cross, Gustave Moynier, was an "enthusiastic supporter of King Leopold in the Congo" (Nesiiah 2016: 324).

race has shaped the way in which the law has been harnessed and operationalized. Integration into the international legal framework does not, in other words, provide security from violent exclusions.

We begin by examining the peculiar status of Ethiopia's sovereignty, while discussing how the tension between sovereignty and race informs the application of international law during and following the fascist military campaign. The article then turns to analyse how the Italian regime and international press framed Italy's systematic bombardment of medical facilities, highlighting how the ICRC ultimately tried to protect its own—mainly white—medical personnel while ignoring how the “hospital shields” argument was part of a broader repertoire mobilized to justify war crimes against Ethiopia's black population. We then describe the League of Nations' tenuous response to Italy's aggression against Ethiopia. By way of conclusion, we argue that the Italo-Ethiopian war and the question of “hospital shields” reveals how sovereignty has historically been inflected by race, which explains, in turn, the discriminatory application of international law, thus laying bare the law's colonial imprint from a new perspective.

White Negroes

The Italo-Ethiopian conflict was a “test case” for the League of Nations (Baer 1976), not least because Ethiopia occupied a very peculiar position in the international order between the two world wars. While it was a member of the League of Nations—alongside two other African countries, Liberia⁸ and South Africa—its status was precarious. On the one hand, it passed all the admission tests necessary for becoming a member—especially the test of having a stable government and control of its borders. It also satisfied two conditions specifically imposed upon it prior to its inclusion in the international civilized order: “pledging to abolish slavery [which was actually still in use in Ethiopia at the time]—and to relinquish its right to import arms.”⁹ Crucially, this latter clause on weapons was not imposed on European powers as a condition for accessing the family of nations, thus underscoring how the League conceived Ethiopia as a country unable to understand which methods of warfare are legal. Notwithstanding such preconceptions, Italy itself had supported Ethiopia's application to the League, with the hope that this would facilitate its influence on the African country. Ethiopia was ultimately portrayed in the European imagination as a sovereign state with independent political institutions and, consequently, it formally enjoyed the protections bestowed on the League's members, including the right to be supported militarily by the members in the case of aggression by another state.

On the other hand, Ethiopia was perceived as different. After inflicting on the Italians one of the greatest defeats in the history of colonialism, the international image of Ethiopians changed. Due to their capacity to challenge European imperialism, they garnered more respect than other Africans and were even “painted White” (Tibebu 1996: 428-419). Borrowing a definition offered by the Austrian anthropologist Friedrich Biever, Ethiopia was “the only [nation] that is civilized without wearing trousers and shoes” (cited in Parfitt 2011: 855). It was, in other words, considered a civilized country but not quite (Bhabha 1994). Hence, Ethiopia occupied a liminal position—the country was accepted as a member state but perceived as not having fully shed its “residual barbarism” because its population was black.

The racist notion of “White Negro” had been used to define racially mixed subjects within the antebellum period in the United States (for instance, Bynum 1998), or in the

⁸ At the beginning of the 1930ies, Liberia's membership was subjected to a similar pressure to that faced by Ethiopia. The Liberian government was asked to implement administrative and financial reforms, and to abolish slavery, as a condition to remain a League's member (Mackenzie 1934).

⁹ The arms embargo had strong repercussions on Ethiopia's capacity to defend itself against the Italian aggression.

colonies to classify Black Albinos (Little 1995), while in anti-colonial literature the corresponding term was used to describe the attitudes of colonized subjects who “want[ed] to be White” as a result of acculturation, according to Frantz Fanon’s famous formulation (Fanon 1952). In the Ethiopian context, the expression was utilized by the traveler Alejandro Liano, who defined the Ethiopians as “the most intelligent Negroes on earth, because they easily assimilate Western education, and if it wasn’t for their superstition [...] they could [...] be at the same level of the men of white race” (Liano 1929: 198). Rose Parfitt has highlighted how this racist cultural prism then influenced the Western construction of the Ethiopian international legal personality as hybrid, where whiteness denoted their sovereignty and acceptance into the League of Nations, while “negro” denoted their incomplete humanness and their contingent inclusion in the family of nations (Parfitt 2011).

The fascist regime—which occupied a dominant position in the League, being one of the four permanent members of the organisation’s Executive Council—exploited Ethiopia’s liminal status. Even before the 1935-36 war, Italy launched a de-legitimization campaign against the African country. The nature of the campaign is summarized by Emilio De Bono, the Italian Minister of Colonies, who, in a letter to Benito Mussolini from 1932, wrote that “Ethiopia, in spite of its membership at the League of Nations and its effort to assume the attitude of a civilized people, is nothing but a semi-barbarous State.” (cited in Rochat 1971: 26). Building on this claim, several eminent Italian jurists helped to develop a doctrine aimed at legitimizing the invasion of the African country (Decleva 1937). Some, like Giuseppe Sperduti, maintained that admitting Ethiopia to the League had been an historical mistake that breached “the principles of [international] law” (cited in Bartolini 2012: 251). Carlo Cereti, another jurist, maintained that given its unwholesome status, Ethiopia should be removed from the League, particularly since the opposition “between a civilized and an uncivilized population... obstructed the development of civilization in every way....” Cereti added that Ethiopia “could only be driven to reason by the application of force” (cited in Bartolini 2012: 254).

Adopting a similar narrative, the Italian Anti-Slavery Society “spent most of the summer and autumn of 1935 justifying Italy’s civilizing mission, providing evidence allegedly given by Abyssinian slaves who had fled to Eritrea, and accusing the ‘pacifists’ [i.e., the League’s architects] of tolerating Ethiopia’s ‘crimes against humanity’” (Forclaz 2015: 162). Thus, the violation of Ethiopian sovereignty, which was part of Italy’s larger colonial endeavor, was also justified as a humanitarian abolitionist enterprise.¹⁰ The Italian government piggy backed on these claims, and in a number of memorandums submitted to the League of Nations, justified its actions by highlighting the barbarity of slavery, which, it claimed, persisted in Ethiopia at the time: “The civilizing mission... which Italy has rapidly accomplished in slavery-infested zones, as soon as the country has been able to assert its control, serves as sufficient evidence that the evil of slavery will soon be a thing of the past in all the Ethiopian territories controlled by Italy.”¹¹ In sum, Italy’s portrayal of Ethiopia as an uncivilized country and its relative low position in the hierarchy of statehood—a hierarchy established according to racial criteria introduced by the League of Nations itself—helped legitimize intervention and ensure that it be carried out without arousing animosity.

Black perfidy

In his memoirs, Vittorio Mussolini offers one of the most meticulous accounts of bombing Red Cross facilities. In a chapter ironically entitled “The Agreeable Red Cross Nurses,” he recounts several flights he carried out between February and March 1936 over a Red Cross

¹⁰ On the use of humanitarian and human rights arguments in order to justify forms of domination, see Perugini and Gordon (2015).

¹¹ *Journal of the League of Nations*, 92nd Session of the Council, Annex 1608, July 1936, p. 868.

encampment: “While we are still descending, I tell the colonel that I can see something white and red [the Red Cross emblem]. He answers that I should be patient [before bombing].” Mussolini continues, depicting the “ubiquitous” Ethiopian resistance as hiding among civilian populations and within medical facilities, thus rendering the application of the principle of distinction impossible. He then proceeds to report how he received an order to monitor the Red Cross more attentively, and to bomb the armed men coming and going from the medical encampment.

The photographer qua military pilot constantly mangle: “I hold my camera as I position myself at the door of the fuselage to improve my position so I can shoot some pictures. [...] Today there is more movement. I see a big red cross made of cloth laying in the midst of an encampment. It wasn’t there yesterday.” Closely inspecting the Red Cross facility, he suddenly sees “some suspect grey spots, some pieces of mimetic tent.” He takes a few pictures, then ponders: “what are these blasts? My heart leaps. This is an act of betrayal.” Referring to the Ethiopian resistance fighters he exclaims: “You tried to ambush the tricoloured wing [the colours of the Italian flag on the aircraft’s wing], but it is with the heart that you should fight, not in this cowardly manner.” Vittorio Mussolini goes on to tell his readers that after the Italian air force took all legal precautions to protect civilians—including dropping leaflets in Amharic and French, warning the combatants not to shoot from the area—“the Red Cross was destroyed.” He notes how the Ethiopian resistance transformed the Red Cross emblem into a shield, sarcastically concluding: “[I] was expecting to see the blonde hair of some Swedish waving a white kerchief as a sign of cordial camaraderie. Instead, we almost lost our lives” (Mussolini 1937: 85-87).

Mussolini’s representations of the war in Ethiopia and the bombardment of medical facilities by the Italian air forces were completely compatible with the way they were portrayed throughout Italy during this time. The trope of the treacherous and brutal armed resistance fighters that ignore the laws of war alongside the image of the honest, law abiding brave fascist were crucial elements in the media coverage of Ethiopia’s conquest. The Red Cross emblem assumed a key function in the Italian propaganda machine, as seen by the covers of some of the most popular Italian magazines and newspapers.

One cover, published in March 1936 (Fig. 1), depicts a few armed Ethiopian men who assault and rob a medical unit of the Dutch Red Cross. The underlying caption—“Ethiopian Civilization”—clearly aims to create a civilizational hiatus between the warring parties by portraying the Ethiopians as failing to understand that medical units are protected under international law. It is here that the inability to distinguish between military and civilian sites in the battlefield is rendered synonymous with the uncivilized and that race and indistinction are imbricated.

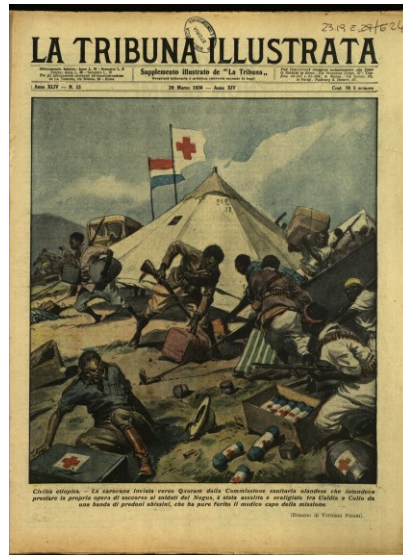


Fig 1: “Ethiopian Civilization.” Source: *La Tribuna Illustrata*, March 1936.

A second cover (Fig. 2) portrays a huge Red Cross tent under which Ethiopian armed men are taking refuge. The caption reads: “One among the many episodes of abuse of the Red Cross emblem by the Abyssinians. During a reconnaissance in the area of Qoram, our aircrafts saw and photographed a huge cloth with a Red Cross [...] When our airplanes got closer, hundreds of armed soldiers, fearing we would bomb them, rushed [under the cloth] from every direction, hiding under the tent.”



Fig. 2: “One among the many episodes of abuse of the Red Cross emblem.” Source: *La Tribuna Illustrata*, January 1936

These images were disseminated precisely at the time when Italy was under international scrutiny for targeting International Red Cross medical units. The images were accompanied by countless articles, which supposedly demonstrated the “abuse of the Red Cross insignia by the Ethiopians.”¹² Their function was to invert the order of violations: it

¹² Pavolini, Alessandro. “Nuova e schiacciante prova dell'abuso dell'emblema della Croce Rossa in Etiopia”. *Il Corriere della Sera* (5th of January 1936).

was not the brutal Italian invasion of a country located hundreds of kilometres away, but rather the perfidious actions of the uncivilized Ethiopians who had infringed international law by shielding behind the Red Cross emblem. This was, of course, the exact same period during which Vittorio Mussolini's air force unit was bombing the "agreeable Red Cross nurses," and when the Ethiopian government—using the testimonies of different international functionaries from the Red Cross—submitted a series of formal complaints to the League of Nations against the Italian government for violating the protections international law bestows upon medical personnel and facilities.

Notwithstanding Italy's use of mustard gas and the widespread bombardment of civilian sites, various foreign journalists, like the renowned novelist-turned-war correspondent Evelyn Waugh, blamed Ethiopia for abusing the emblem. In his memoirs, Waugh, who covered the Italian-Ethiopian war for the London-based *Daily Mail*, described the first Italian bombardments of an Ethiopian hospital in Dessie. Close to the town's main hospital, he wrote, there was a Coptic church building above which "a Red Cross [was flying... while an Ethiopian] anti-aircraft gun was mounted on the balcony" (Waugh 1936: 204). He went on to raise doubts about the way in which the Ethiopians had gathered the testimonies they had sent to the League of Nations, depicting the local population as both primitive and as deploying complex methods of perfidy: "Tricking the European was a national craft... Tricking the paid foreign advisors, tricking the legations, tricking the visiting international committees—these were the ways by which Abyssinia had survived and prospered" (Waugh 1936: 27).

Several Italian newspapers readily adopted Waugh's claims, publishing articles about "the Red Cross pseudo medical units" and about "what hides in Ethiopia behind the inviolable Red Cross."¹³ Citing the testimony of one of the European counsellors of the Ethiopian Emperor, the influential paper *La Stampa* claimed that in Abyssinia the Red Cross emblem was used to mark beer deposits.¹⁴ In a similar vein, the national newspaper *Il popolo di Roma*, published a caricature entitled "Pro-Negro Red Cross" (Fig. 3), which further stressed the racial underpinnings informing the civilizational divide between Italians and Ethiopians. A white doctor and his assistant are portrayed nursing a black patient in a Red Cross encampment. One of the two oxygen cylinders in the tent is actually a warhead marked with a Red Cross. In the caricature's caption, the assistant tells the doctor: "this oxygen cylinder lacks the attachment for the oxygen tube." The message is clear: the Red Cross is "Pro-Negro" and its encampments harbour Ethiopian combatants and serve as arms depots, which explains, in turn, why their medical units are legitimate military targets.

¹³ Waugh cited in Paolo Zappa, 'Quello che si nasconde in Etiopia sotto l'inviolabile "Croce Rossa",' *La Stampa* 25 November 1935, accessed on 29 January 2018

http://www.archiviolaStampa.it/component/option,com_lastampa/task,search/mod,libera/Itemid,3/action,viewer/page,1/articleid,1624_02_1935_0281_0001_22460489/

¹⁴ 'Virgin ammette,' *La Stampa* 7 January 1936, accessed on 29 January 2018

http://www.archiviolaStampa.it/component/option,com_lastampa/task,search/mod,libera/action,viewer/Itemid,3/page,1/articleid,1622_02_1936_0006_0001_22461793/

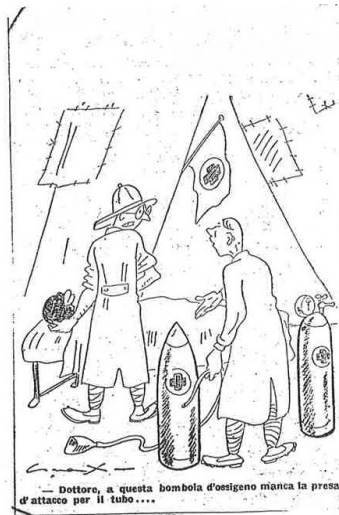


Fig. 3: This oxygen cylinder lacks the attachment for the oxygen tube. Source: *Il popolo di Roma*, 30 January 1936.

Newspapers were not the only platform Italy used to justify the bombing of health facilities. The prominent illustrator and cartoonist, Aurelio Bertiglia, produced a postcard depicting armed Ethiopian children who are dressed partially in military uniform and partially in Red Cross attire and who are fleeing from armed Italian children wearing military fatigues (Fig. 4). One of the black children is carrying a Red Cross umbrella embroidered with Ethiopian themes. On the ground, an ammunition chest with British-made dum-dum bullets—prohibited by the 1899 Hague Convention on expanding bullets—is marked with the Red Cross emblem. At the centre of the image is a white child portrayed stabbing the red-crossed rear-end of a black child with his carabiner. This postcard connects Italy's accusation that the Red Cross was shielding Ethiopian fighters with the allegation that other League member-states were supporting the Ethiopian government. To back such claims, the Italian press published articles about how British intelligence officers dressed as medical staff used Red Cross field hospitals as cover as they trained the Ethiopian resistance, and how London ammunition companies were using the Swedish Red Cross to conceal the provision of dum-dum bullets to the Ethiopians. The general claim was that “Italy liberates the Ethiopian slaves while Geneva defends the pro-Negro forces.”¹⁵



Fig 6: Postcard by Aurelio Bertiglia.

¹⁵‘Contro la frode ginevrina,’ *La Stampa* 1 February 1936, accessed on 29 January 2018 http://www.archiviolaStampa.it/component/option,com_lastampa/task,search/mod,libera/action,viewer/Itemid,3/page,1/articleid,1135_01_1936_0028_0001_24281494/

While the postcard intimated that Ethiopian indistinction was carried out with the complicity of European powers, Vittorio Mussolini, the fascist propaganda machine and certain foreign journalists all drew a connection between the race and the ostensible inability of the Ethiopian resistance to understand the basic principles informing international law. In this way, a link was created between race and the lack of distinction.

ICRC and the emblem debate

Italy was not the first country to bomb the ICRC medical units. Since the First Geneva Convention of 1864, which set up the protections provided to those who had been wounded and the medical units serving them, Red Cross hospitals had been targeted and its emblem had been misused several times. Beginning just a few years after the Convention had been signed in the 1870-71 Franco-German war and persisting throughout World War I, the breach of medical immunity was widespread (Baudendistel 2006: 102-103). What is different about the Italo-Ethiopian war is not only the connection the fascist regime drew between race and indistinction—a connection absent from the debates on the bombardment of Red Cross facilities in Europe—but also the complicity of the ICRC, perhaps the most important global humanitarian organizations.

In its exchanges with the Red Cross and in its communication with the League of Nations' Commission dealing with the Italo-Ethiopian war, Ethiopia accused Italy of endangering international peace, the bombardment of "numerous villages inhabited by non-combatant peasants [...], the killing of women and children," and the deliberate targeting of the ICRC. These accusations were accompanied by testimonies of personnel from the ICRC units attacked by the Italians during the war. In response, the fascist government reiterated its charges about the uncivilized character of Ethiopian warfare, claiming that the "guerillas" used the Red Cross emblem as a shield, and that the Ethiopian "atrocities" and "war crimes" legitimized Italy's harsh methods of warfare.¹⁶ The Italians went on to argue that "the only clause of the Geneva Conventions which the Abyssinians regard as valid, and clamorously invoke on every occasion, is that which lays down that any persons taking refuge under the sign of the Red Cross should be secure from aerial bombardment."¹⁷ To debunk the Ethiopian accusations, the Italians submitted a number of memorandums to the League of Nations, and these included aerial pictures similar to those published by Vittorio Mussolini in his memoir, which ostensibly showed Ethiopian efforts to shield themselves behind the ICRC medical units.¹⁸

Meanwhile, and even before the Italo-Ethiopian conflict subsided, the International Review of the Red Cross invited several legal experts to write on questions relating to "the visibility of the Red Cross emblem" and the "dangers posed by aerial war to hospitals" (Julliot 1936; L.D. 1936). The protection of the Red Cross emblem is defined in one of these articles as "a high moral duty" precisely at a moment when so many actors do not respect "any conventions" (L.D. 1936: 208). While the contributors to this special issue condemned the targeting of hospitals, the President of the International Association of Hospitals, commenting on Italy's bombardment of medical facilities, tried to divide the blame, asking all countries involved to take all necessary measures to "assure the security of their hospitals" (Alter 1936: 257). This critique had two targets: the Italians who bombed the hospitals and the Ethiopians who were accused of using them as shields.

¹⁶ See *Journal of the League of Nations*, 91st Session of the Council, Annex 1952, April 1936, and *Journal of the League of Nations*, 90th Session of the Council, Annex 1587, February 1936.

¹⁷ *Journal of the League of Nations*, 91st Session of the Council, Annex 1952, April 1936: 408.

¹⁸ *Journal of the League of Nations*, 91st Session of the Council, Annex 1952, April 1936: 433-436.

Along similar lines, in his memoir *Warriors Without Weapons*, the International Red Cross delegate in Ethiopia, Marcel Junod, claimed that the ICRC's intervention in the country was fundamental to the humanitarian organization's development. Referring to the ICRC as a "third warrior," a humanitarian fighter without weapons, he adopts the ostensibly neutral style characterizing Red Cross speak, while depicting the Ethiopians as a backward people of bellicose tribes completely unaware of the meaning of the Geneva Conventions. Simultaneously, he criticizes Italy's claim that it acted in good faith when targeting Red Cross facilities. Recalling one Italian attack against medical units, he writes: "What struck me forcibly was that nowhere along the route had I seen any spot which had been bombed with such concentrated fury," and concludes that "as repeated bombing had demonstrated the Red Cross insignia offered no protection" (Junod 1951: 49). One could safely infer from his descriptions that the emblem itself became a prime target. Nonetheless, Junod concluded that both sides violated the Geneva Convention, portraying the Ethiopians, not the Italians, as the side inherently ignorant of the international norms regulating warfare.

It is crucial to highlight two interconnected claims promulgated by the ICRC. First, the humanitarian organization subscribed to the fascist idea that there is an intrinsic link between race and the lack of distinction. This is reflected and reinforced in its various publications. In his explanation of how civilized and non-civilized heads of state understood the Red Cross's role in war, Junod writes that while the first understood that the Red Cross emblem was an emblem of hope—the hope to regulate war in spite of its brutality, and create protected zones in the battlefield—non-civilized heads of state, among which he counted the Ethiopian Emperor, could not grasp this point. Civilized and uncivilized states are represented as having two intrinsically different conceptions of the laws of war and of the Red Cross's function (Junod 1951: 29). This interpretation was very similar to the one advanced by the fascist regime itself.

Second, in its official denunciations, the ICRC tended to turn a blind eye to the violations of the principle of distinction carried out by the Italians against Ethiopians, even though the fascist regime repeatedly targeted civilians and civilian infrastructure. When in 1936, after the end of the hostilities, Junod started compiling the White Book—a comprehensive ICRC report on the violation of the Geneva Conventions—the fascist government was given the opportunity to secretly intervene in the book's final version, in which some of the harsher cases of bombing of Red Cross hospitals were framed as instances of Ethiopian hospital-shielding (Baudendistel 2006: 196-200). The ICRC, as Rainer Baudendistel explains, "was only concerned with possible violations of the Red Cross emblem. The underlying question, whether it was legitimate to bomb largely civilian targets and what the ICRC's reaction should be to that was not raised [...]. Geneva simply did not appreciate the wider significance" of the bombardment of the ICRC medical facilities—namely, that the systematic targeting of the Red Cross was part of an extended Italian strategy of indiscriminate bombardment against the entire Ethiopian population (2006: 126).

The ICRC, in other words, rejected the Italian shielding argument only when it endangered its own medical structures and staff, but failed to mention in any of the publications that we have come across that the same kind of crimes were being committed by the fascist regime against the black civilian population at large. By attributing a different value to human lives, the ICRC accepted the notion of a White-Negro sovereign. International law did not apply to the black side of the divide in the same way that it did to the white side, and its denunciations focused on the corporate protection of the Geneva humanitarian institution and its emblem rather than on the protection of civilians regardless of their race.

State impunity

The League of Nations was also ambivalent about Italy's crimes. According to Article 10 of its Covenant, "The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." This includes the duty to intervene diplomatically and militarily in response to the crime of aggression against a member state.¹⁹ Ultimately, the widely documented and indiscriminate bombing of Ethiopian civilian sites, including the use of mustard gas and the targeting of the ICRC medical units, led the League to impose cosmetic economic sanctions on Italy, while publishing a number of feeble condemnations against the invasion. The fact that the League of Nations discussed the violations of international law committed by the parties involved in the conflict served as an acknowledgment of Ethiopian sovereignty and its legitimacy as an international actor. The League was, however, unwilling to put its weight to defend the "White Negroes" (Baer 1976; Zolo 2009: 11).

According to Carl Schmitt (1940)—who supported the fascist claim that Ethiopia should not have been admitted in the family of nations—the weak economic sanctions imposed on Italy (and lifted in 1936 after its annexation of Ethiopia), and the League's decision against military intervention in support of the Abyssinians, marked the re-articulation of colonialist aspirations under a liberal guise. "Subconsciously," he wrote, "the distinction of traditional European international law was at work, i.e., in the fact that war on non-European soil fell outside [international law's] order and that Africa was considered to be colonial territory" (Schmitt 2006: 243). Taking Schmitt's insights into account, it is not surprising that no significant measures were adopted to stop Italian aggressions, and that the League, to put it in Winston Churchill's words, "proceeded to the rescue of Abyssinia on the basis that nothing must be done to hamper the invading Italian armies" (Churchill 1939: 21).

In hindsight, one could say that the question of White Negroes was intricately tied to the language of trusteeship—a language developed by the League's imperialist powers to demonstrate that softer and devolutionary forms of control of the non-White world would lead to progress and the eventual emancipation of the colonized (Pedersen: 297). Italy appropriated this language to justify its brutal conquest of another member state. The major European powers, even the most liberal ones, had to choose between intervening against colonial aggression under the guise of trusteeship and the collapse of an institution that guaranteed European hegemony, and they, more or less unanimously, chose the latter (Berman 1996: 454).

It was only following World War II, after fascists carried out egregious crimes on European soil that liberal states started speaking openly of Italian war crimes carried out in Ethiopia (Pankhurst 1999: 83). Significantly, when Britain set-up a War Crimes Commission in 1943—which after 1945 was called the UN War Crime Commission—to deal with World War II violations and the crimes committed by the Nazis and their allies, the Ethiopian case was initially excluded. The Commission examined cases of alleged war crimes committed by the Germans and the Italians during their military occupations within Europe but refused to include the fascist occupation of Ethiopia, which had lasted until 1941. The basis for the exclusion, promoted mainly by Britain, was that the Commission should deal only with military occupations that happened on European soil (Pankhurst 1999: 93). To paraphrase Aimé Césaire, the Western members of the Commission were ready to absolve fascist war crimes that were not inflicted on them (Césaire 1972).²⁰

¹⁹ Ironically, the silk glove used by the League when dealing with the Italians did not prevent the latter voluntary withdrawal from the international organization in 1937.

²⁰ Nonetheless, some scholars consider the debate surrounding the Italo-Ethiopian war as evidence that in spite of its inadequacy the League constituted a significant change in the international order (Friedmann 1964). The prominent legal scholar Hans Kelsen argued that in the Ethiopian case the League had "at least made certain efforts to fulfill its duty in the cases of illegal aggression undertaken by member states against other member

Only after the 1947 Paris Peace Conference, when the victors of WWII integrated the acts “entailing the responsibility of Italy or of Italian nationals towards Ethiopia [since] 1935” in the list of potential Fascist war crimes and following the publication of an Ethiopian governmental report on Italy’s violations during the war entitled *The Civilization of Fascist Italy* (1948), did the UN Commission agree to examine the Ethiopian case. The UN report ends by invoking the significance of justice for the victims of atrocities: “While the international community prepares for peace, we feel that its first duty is to bring justice to innocent victims” (UNWCCb 1948: 62). Ultimately, however, the Commission examined the cases of only two Italians, Marshals Pietro Badoglio and Rodolfo Graziani, who had been responsible for commanding military operations in Ethiopia. The involvement of other fascists who had been active in Abyssinia were ignored. Moreover, when Ethiopia invoked the Nuremberg and Tokyo trials as precedents to demand Badoglio’s and Graziani’s extradition, the request was rejected primarily because Britain wanted to preserve relations with Italy, a post-war ally (Pankhurst 1999; Zolo 2009: 90-92).

During the Commission meetings, the bombardments of the Red Cross hospitals by the Italian air force were widely debated, with the Swedish delegate—Baron Lejonhufvd—citing Vittorio Mussolini’s *Flights Over the Amba Mountains* as evidence of the deliberate nature of the Italian targeting of the Red Cross and Ethiopian civilians. Lejonhufvd argued that “this was the first time in history when Red Cross units were continuously persecuted, and that [...] it must have been part of a policy.” The Norwegian delegate countered Lejonhufvd’s claims, saying that he had read *Flights Over the Amba Mountains* and that Mussolini made it quite “clear that the Ethiopians did not fight in ordinary enclosed formations—they fought more like guerillas,” shielding behind civilians and the Red Cross (UNWCCa 1948). Other European delegates discussed Ethiopian methods of warfare as primitive and non-modern, intimating that they agreed with the Italian claim that Ethiopian indistinction was somehow connected to their race.

Conclusion

The bombing of hospitals in the Italo-Ethiopian war, the way the war was portrayed in fascist Italy, its intersection with Ethiopia’s status as a “White-Negro” sovereign state, the legal-political debate it generated, the ICRC’s position within this debate, and the impunity Italy was ultimately granted by the League of Nations and then the United Nations, all point to the intimate connection between race, sovereignty, and international law. Critical legal scholars have demonstrated that this connection constituted a structural component in the development of the international legal order. As Anthony Anghie points out, nineteenth-century jurists sought to reconstruct the entire system of international law as a creation of sovereign will, and argued “that the sovereign state can do as it wishes with regard to the non-sovereign entity which lacks the legal personality to assert any legal opposition” (2005: 34).

This, however, does not provide an account for the various forms of colonial encounters and the different conceptions of sovereignty and interpretations of international law which these encounters have generated. The fact that sovereignty was conceived as the determining factor for the application of international law did not prevent the production of alternative forms of sovereignty that were deemed lesser than European sovereignty due to their inflection with blackness. International law, in turn, was interpreted and applied differently according to the specific variant of sovereignty. This is where the complexity of

states” (Kelsen 1941: 80). Others interpreted the League’s decision not to hinder Italy’s aggression against Ethiopia as the manifestation of the prevalence of national interests and the principle of national sovereignty over international cooperation (Fenwick 1949), or as a demonstration of the disconnection between an ideal of equality among strong and weak members states promoted by the League and the factual inequality (Thomas 1951).

positivist jurisprudence becomes apparent, since it reveals how exclusion comes into play also through inclusion.

Colonized people are integrated within the sphere of international law only after they are included within the family of nations and acquire sovereignty. But this inclusion is informed by the idea that the society—and here society means race—making up the sovereign state matches a particular civilizational stage. Consequently, the civilizational stage of society determines the specific type or degree of sovereignty. “The concept of society,” Anghie writes (2005: 99), “is crucial to the positivist scheme because it enables a distinction to be made between different types of states; the effect of the distinction is to exclude non-European states from the family of nations and hence from the realm of sovereignty itself.” This is not precise, however, since, as the Ethiopian case reveals, non-European states were included within the family of nations in spite of their society. Anghie does add, however, that, “This reliance on the concept of society to establish sovereignty seems somewhat at odds with the claim that sovereignty is the core and essential principle of international law, and that everything within the system derives from sovereignty.” Sovereignty, we agree, is not the essential principle of international law, but rather the gatekeeper, determining when and where international law can be applied, while a racialized notion of society regulates how the law is interpreted and applied.

Just as importantly, the expansion of the international legal order to newly established sovereign states underscores how recognition and inclusion—usually associated with emancipation and the procurement of rights—can facilitate the deployment of lethal violence and its interpretation as ethical. If during most colonial wars international law *was not applied* due to the indigenous people’s lack of sovereignty, in the Italo-Ethiopian war the law *was applied* because Ethiopia was a sovereign state. This, as we have explained, is the reason why the Italian government felt compelled to enter a legal debate with the Ethiopian government, the League of Nations, and the ICRC, and to use international law to interpret an array of events within the fray. Nonetheless, Ethiopian sovereignty was framed in racial terms, namely, as precarious due to a form of civilizational incompleteness, and this had a major impact on how European actors applied and interpreted the law. Trying to persuade the warring parties to abide by international law, the ICRC alongside the League of Nations echoed the Italian allegation that the Ethiopian army failed to respect the basic principle of distinction due to an intrinsic tendency towards perfidy and indistinction. The unspoken alliance among the fascist regime, the ICRC, and the international community, underscores that even when state sovereignty offers protection to the non-western world, the particular way law is applied and violence is justified is inflected by the dehumanizing effect of racial thinking.

The manner by which the League of Nations and the ICRC dealt with the bombardment of hospitals and other egregious violations is particularly illuminating because it reveals how the inclusion of Ethiopia into the family of nations—or paraphrasing Samera Esmeir (2012), into international juridical humanity—not only did not undermine the colonial imprint of international law, but also helped cement it. It is therefore crucial to think about the process of colonial inclusion into the liberal order of humanity against the grain, and, with Ayça Çubukçu (2017), to reveal how it took place while corroborating the legitimacy of the violence perpetrated against those who were “humanized.” Integration through sovereignty and the application of the law did not necessarily mean the suspension of a racial interpretation. In a double-movement, inclusion within international law transmogrified into racist exclusion.

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